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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 **SANDRA KIRKMAN AND CARLOS  
ALANIZ, INDIVIDUALLY AND AS  
12 SUCCESSORS-IN-INTEREST TO  
JOHN ALANIZ, DECEASED,**

13 Plaintiffs,

14 v.

15  
16 **STATE OF CALIFORNIA; RAMON  
SILVA; AND DOES 1-10,  
17 INCLUSIVE,**

18 Defendants.

Case No. 2:23-cv-07532-DMG-SSC

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
WITHDRAW AS COUNSEL AND  
REQUEST TO MODIFY  
SCHEDULING ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF; DECLARATION OF  
DEPUTY ATTORNEY GENERAL  
ASHLEY REYES**

Date: January 3, 2025  
Time: 9:30 a.m.  
Courtroom: 8C  
Judge: Honorable Dolly M. Gee  
Trial Date: 04/15/2025  
Action Filed: 7/28/2023

21 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE THAT** on January 3, 2025, at 9:30 a.m., or as  
23 soon thereafter as this matter may be heard in Courtroom 8C of the above-captioned  
24 court, located at 350 West 1st Street, Los Angeles, CA, 90012, counsel for  
25 Defendants, State of California, acting by and through the California Highway  
26 Patrol (CHP), and Officer Ramon Silva, will and hereby do move the Court to grant  
27 leave to withdraw as counsel for all Defendants. This motion is brought under the  
28 Local Rules for the United States District Court, Central District of California, Rule

83-2.3.2, and those rules governing withdrawal as set forth in the Rules of Professional Conduct of the State of California.

This Motion and Request for Order is based upon the following grounds:

1. The grounds and reasons set forth in the declaration of Deputy Attorney General Ashley Reyes, filed under seal herein as it involves the disclosure of client confidences and communications;

2. Because revealing the facts on which this motion is based would involve disclosure of client confidences, Defendants' present attorneys of record represent and certify to the Court that good cause exists for withdrawal under one or more of the more grounds specific in California Rules of Professional Conduct, including Rules 1.1, 1.3, 1-7 and 1-16(a).

3. Clients CHP and Officer Ramon Silva were served with this motion.

This motion is based on this Notice of Motion, the Attached Motion to Withdraw as Counsel for Defendants, the declaration of Deputy Attorney General Ashley N. Reyes, the pleadings and papers on file herein, and upon such other evidence or argument as may be presented to the Court at the time of the hearing.

Dated: December 4, 2024

Respectfully submitted,

ROB BONTA  
Attorney General of California  
NORMAN D. MORRISON  
Supervising Deputy Attorney General

/s/ Ashley Reyes  
ASHLEY REYES  
Deputy Attorney General  
*Attorneys for Defendants State of  
California, acting by and through the  
California Highway Patrol, and  
Officer Ramon Silva*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. AUTHORITY**

Local Rule 83-2.3.2 governs the withdrawal of counsel in the Central District of California. It provides:

“An attorney may not withdraw as counsel except by leave of court. A motion for leave to withdraw must be made upon written notice given reasonably in advance to the client and to all other parties who have appeared in the action. The motion for leave to withdraw must be supported by good cause. Failure of the client to pay agreed compensation is not necessarily sufficient to establish good cause.”

C.D. Cal. L.R. 83-2.3.2.

In determining whether good cause is shown, the court may consider: “(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case.” *Liang v. Cal-Bay Int'l, Inc.*, No. 06CV1082-WMC, 2007 WL 3144099, at \*1 (S.D. Cal. Oct. 24, 2007). Courts also consider any relevant rules of professional conduct. *Austin Inv. Fund, LLC v. United States*, No. SACV 11-750 DOC ANX, 2011 WL 4947550, at \*1 (C.D. Cal. Oct. 17, 2011).

**II. ARGUMENT**

**A. Defendants’ Counsel’s Withdrawal Is Necessary Due to A Conflict of Interest**

Defendants’ counsel’s withdrawal is necessitated due to a conflict of interest, as identified by California Rules of Professional Conduct, Rule 1.7. Withdrawal is required pursuant to California Rules of Professional Conduct, Rule 1.16(a)(2), which provides in relevant portion that:

[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if...the lawyer knows or reasonably should know that the representation will result in violation of these rules or of the State Bar Act.

1 Client confidentiality and privilege interests impose a limitation on counsel's  
2 ability to set forth the grounds for this withdrawal in this motion and the  
3 accompanying documents that are not filed under seal. Cal. Rules of Prof. Conduct,  
4 R. 1.7(a)-(b). However, good cause exists for counsel's both mandatory and  
5 permissive withdrawal as specifically set forth in the California Rules of  
6 Professional Conduct, Rule 1.7 as set forth in the Declaration of Deputy Attorney  
7 General Ashley Reyes filed under seal concurrently herewith. For purposes of this  
8 motion, Defendants' counsel notes that a conflict has arisen pursuant to California  
9 Rules of Professional Conduct Rule 1.7 that serves to ethically bar and prevent the  
10 Defendants' counsel of record from representing the Defendants in this action.  
11 Further, any other attorneys within the California Attorney General's Office are  
12 also ethically barred from representing Defendants in this matter pursuant to  
13 California Rules of Professional Conduct Rule 1.10. The ethical conflict requiring  
14 withdrawal has only recently arisen. Defendants' counsel attempted to identify  
15 ethical and legally permissible methods of waiving the conflict but are unable to do  
16 so. Accordingly, Defendants' counsel has taken prompt action to inform our clients  
17 and obtain replacement counsel.

18 Further, Defendants have filed a separate ex parte motion regarding documents  
19 and evidence which this Court has held is directly relevant to the claims and  
20 defenses of the parties, and which although was in the possession, control and  
21 knowledge of the Plaintiffs and their counsel of record, was never disclosed or  
22 identified in any discovery responses or during the depositions of the Plaintiffs.  
23 Although this evidence is clearly relevant and pertinent to the facts and allegations  
24 in this case, Plaintiffs' counsel objected to its production and formally opposed  
25 Defendants' motion to compel the production of such information. This evidence  
26 was only recently produced on November 19, 2024, pursuant to this Court's order.  
27 Accordingly, Defendants have requested additional time to conduct discovery into  
28 the matters and subjects identified in these records, including information which

1 contradicts the Plaintiffs' sworn deposition testimony in this case, and which will  
2 affect the opinions and testimony of the experts of both sides in this case.  
3 Defendants' counsel anticipate that replacement counsel can be obtained and  
4 substitute in while such limited discovery is being conducted, thereby minimizing  
5 any delay in the trial of this case.

6 Most importantly, the conflict of interest which has arisen between Defendants  
7 and counsel requires counsel to withdraw from representing the Defendants in this  
8 action. *Inigo v. Express Movers, Inc.* No. 3:18-CV-02844-BEN-LL, 2020 WL  
9 8838166, at \*2 (S.D. Cal. June 24, 2020; see also *People ex rel. Deukmejian v.*  
10 *Brown* (1981) 29 Cal.3d 150, 157 (1981) (the CA Supreme Court held that the  
11 Attorney General is subject to the same ethical rules as other lawyers with respect  
12 to the prohibition on taking a position adverse to a client.). As noted in the  
13 proposed sealed declaration, withdrawal is required by the Rules of Professional  
14 Conduct. Finally, there is no evidence that granting this motion harms  
15 administration of justice.

16 **B. A Modification of the Current Scheduling Order Is Necessary**  
17 **for Defendants' Replacement Counsel to Prevent Prejudice to**  
**Defendants**

18 Should the Court grant Defendants' counsel's motion to withdraw,<sup>1</sup>  
19 Defendants' replacement counsel will need adequate time to ensure that he is able  
20 to sufficiently analyze the evidence produced, as well as the specific liability and  
21 damages issues. To date, Defendants alone have produced over 9,250 documents.  
22 Declaration of Deputy Attorney General Ashley Reyes (Reyes Decl.), at ¶15.) The  
23 vast majority of these documents include evidence, photographs, interviews and  
24 videos from the DOJ's AB 1506 investigation, which include critical documents as  
25 the officer-involved shooting forms the basis of this lawsuit. *Id.* There has been a  
26 total of eight depositions taken between both parties. *Id.* The AB 1506 Report that

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28 <sup>1</sup> Defendants' counsel will appear in camera, out of the presence of Plaintiffs' counsel, to discuss the specific nature and facts of the conflict.

1 was issued in July also identified a total of 25 civilian witnesses<sup>2</sup> that provided  
2 interviews; replacement counsel will need to review these witness statements to  
3 determine whether these individuals and any members of the CaPSIT team will  
4 need to be called as witnesses at the time of trial. *Id.* In addition to the documents  
5 produced, Defendants have subpoenaed records from various agencies including the  
6 Torrance Police Department and the Veteran's Administration. *Id.* These records  
7 combined total approximately 900 pages. *Id.* It is without a doubt that reviewing  
8 this information and becoming familiar with the file will take extensive time and is  
9 necessary to ensure that CHP and Officer Silva's interests are protected. *Id.*

10 In addition to reviewing and analyzing the evidence, liability, and damages,  
11 replacement counsel will also need time to review and analyze all expert materials.  
12 Although current counsel has already retained experts in this matter, replacement  
13 counsel will need to assist one of these experts in completing a vital physical  
14 evidence inspection as current counsel has been unable to do so because of the  
15 conflict. *Id.*, at ¶16. Without this physical inspection and review of the physical  
16 evidence taken at the scene of this incident, CHP and Officer Silva's expert witness  
17 will be unable to issue a Rule 26 report, which would cause undue prejudice to  
18 Defendants. *Id.* On November 12, 2024, Defendants' counsel issued a subpoena on  
19 the DOJ for a physical inspection of evidence collected during the AB 1506  
20 investigation. *Id.*, at ¶14. On November 21, 2024, Defendants' counsel, Plaintiffs'  
21 counsel, Officer Silva, and Defendants' retained experts were present at the DOJ  
22 office in Commerce, California and were informed that a physical inspection of the  
23 physical evidence was not permitted, nor were photographs. *Id.* Despite the specific  
24 requests outlined in the subpoena served on the DOJ, the parties were told that they  
25 were only allowed to take notes of the items of evidence.<sup>3</sup> *Id.* Due to unique

26 \_\_\_\_\_  
27 <sup>2</sup> Two of the 25 civilian witnesses identified in the AB 1506 report have been  
deposed.

28 <sup>3</sup> The majority of the evidence were in brown evidence bags, which were  
sealed.

1 situation at hand, Defendants' counsel is unable to file a motion to compel an  
2 inspection as it would be against its own agency. *Id.* Thus, Defendants' counsel has  
3 a conflict between the interests of CHP and Officer Silva, and simultaneously the  
4 interests of our agency, thereby leading to an impermissible, unwaivable conflict.  
5 This conflict would not exist if outside counsel were brought into the matter.

6 Finally, Defendants are the only party that would suffer any prejudice should  
7 the Court grant Defendants' counsel's motion to withdraw but deny a modification  
8 of the current scheduling order. Extending the deadlines within the scheduling order  
9 for 180-days is necessary to ensure that both CHP and Officer Silva are not  
10 significantly prejudiced by having to change counsel this far into the litigation.  
11 Declaration of Lee H. Roistatcher (Roistatcher Decl.,) at ¶¶6-12. Plaintiffs will  
12 suffer no prejudice as fact discovery has essentially concluded at this point, and a  
13 continuance will not result in the loss of any evidence or pose a risk to fading  
14 memories of witnesses. Roistatcher Decl., at ¶13. Further, a continuance does not in  
15 any way impact Plaintiffs' damages because they are all non-economic and will not  
16 change over the course of six months. *Id.*

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18 ///

19 ///

1 **III. CONCLUSION**

2 Based on the foregoing, as well as the information set forth in the Declaration  
3 of Deputy Attorney General Ashley Reyes filed under seal concurrently herewith,  
4 the Office of the Attorney General, Department of Justice, respectfully requests this  
5 Court grant its motion to withdraw as counsel for Defendants and extend the trial-  
6 related deadlines to allow new counsel to assume the handling of this case.

7 Dated: December 4, 2024

Respectfully submitted,

8 ROB BONTA  
9 Attorney General of California  
10 NORMAN D. MORRISON  
11 Supervising Deputy Attorney General

12 /s/ Ashley Reyes  
13 ASHLEY REYES  
14 Deputy Attorney General  
15 *Attorneys for Defendants State of*  
16 *California, acting by and through the*  
17 *California Highway Patrol and*  
18 *Officer Ramon Silva*

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendants, certifies that this brief contains 1,499 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 4, 2024

Respectfully submitted,

ROB BONTA  
Attorney General of California

/s/ Ashley Reyes  
ASHLEY REYES  
Deputy Attorney General  
*Attorneys for Defendants State of  
California, acting by and through the  
California Highway Patrol and  
Officer Ramon Silva*

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## CERTIFICATE OF SERVICE

Case Name: **Sandra Kirkman, et al. v. State of California, et al.** No. **2:23-cv-07532-DMG-SSC**

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I hereby certify that on December 4, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO WITHDRAW AS COUNSEL  
AND REQUEST TO MODIFY SCHEDULING ORDER; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF DEPUTY  
ATTORNEY GENERAL ASHLEY REYES**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 4, 2024, at Fresno, California.

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Carrie Vue  
Declarant

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*/s/ Carrie Vue*  
Signature